

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

August 1, 2000

ORDER DENYING
RECONSIDERATION OF
HEARING EXAMINER
ORDER

S.D. WARREN
Petition to Establish Power Purchase Agreement
Rate for Sales of Energy and Capacity by
Warren's Somerset Mill to Central Maine
Power Company

Docket No. 2000-123

CENTRAL MAINE POWER COMPANY
Petition to Establish Power Purchase Agreement
Rate with UAH Hydro Kennebec

Docket No. 2000-142

I. SUMMARY

In this Order, we deny the Industrial Energy Consumer Group's (IECG) request that the Commission reconsider the Hearing Examiner's Order denying the IECG's Motion to Initiate Arbitration, or in the Alternative, to Suspend Proceedings for One Month.

II. BACKGROUND

On May 24, 2000, the IECG filed a Motion to Initiate Arbitration or, in the Alternative, to Suspend Proceeding For One Month in the above-captioned proceedings. The Motion was filed in reaction to a procedure for protecting confidential material established by the Commission Staff and the parties in the S.D. Warren proceeding (Docket No. 2000-123). The confidential material at issue involves the competitive generation supply costs of Central Maine Power Company's (CMP) large industrial customers. The Staff and the parties to the S.D. Warren proceeding determined that, pursuant to the recently amended unallocated section 6, P.L. 1999, ch. 730, of the State's restructuring law, this information must be provided so that the Commission can establish the rates under the existing Purchased Power Agreement (PPA) between CMP and S.D. Warren. Section 6 requires that those rates be established by reference to the annual change in total electric prices paid by CMP's customers in applicable rate classes.¹

¹ Section 6 also applies to CMP's PPA with UAH Hydro Kennebec. The issue of the provision of competitive supply costs has not yet been addressed in the UAH proceeding because the parties are attempting to settle the matter. The parties have indicated that the matter is likely to settle and, as a result, the processing of the UAH proceeding has been suspended.

Recognizing the sensitive nature of competitive supply costs to CMP's industrial customers, the Staff and parties in the S.D. Warren proceeding agreed on a procedure to protect the confidentiality of the supply cost information. Under this procedure, the information will be provided under protective order only to the Commission, which will keep it in a secure location. The Commission Staff will calculate the monthly PPA rate. The parties to the PPA, S.D. Warren and CMP, each have engaged an independent auditor that will have access to material at the Commission offices for purposes of verifying the Staff's calculation. This process will continue through February 2001 after which all the confidential material will be returned or destroyed.²

III. IECG MOTION

In its Motion, the IECG argued that the Commission should institute an arbitration or negotiation process to avoid the potential disclosure of highly confidential and private energy supply cost information. The IECG asserted that, through an arbitration or negotiation process, the S.D. Warren PPA rates could be established without reference to specific customer energy supply costs. The IECG stated its belief that the provision of highly sensitive supply cost data so early in the life of Maine's retail competitive electricity market, even under protective order, would have a chilling effect on market participants.

Both parties to the S.D. Warren contract opposed the IECG motion. CMP stated that there is no legal basis for the Commission to grant the IECG's motion, because the Commission is required by Section 6 to establish the PPA rates using a specified methodology. This statutorily mandated methodology requires the PPA rates to be based on the annual change in the actual total price paid for electricity by other customers. Additionally, CMP pointed out that the arbitrators would, presumably, need to have access to the same type of market data that the IECG believes should not be disclosed. Finally, CMP noted that there have already been lengthy discussions between CMP, S.D. Warren, the Commission Staff and the Public Advocate to settle the dispute over the PPA prices. These discussions did not yield an agreement and, thus, according to CMP, it would not make sense to mandate negotiations at this time.

S.D. Warren commented that the plan for establishing the PPA rates developed by the parties and the Staff ensures, to the greatest possible extent, that the necessary information will be protected from disclosure and that the integrity of the competitive markets will not be impaired. Further, S.D. Warren stated that the proposed arbitration and/or mediation cannot succeed without some mechanism to obtain the same information that the IECG seeks to protect. Finally, S.D. Warren noted that it met with CMP on numerous occasions in an effort to settle this matter. Those efforts were unsuccessful, and S.D. Warren has no reason to believe that additional mediation would produce a different result.

² Unallocated section 6 requires that the S.D. Warren PPA rates be set by reference to other customer's costs only through February 2001.

By Procedural Order issued June 2, 2000, the Hearing Examiner denied the IECG's Motion, stating that any attempt to resolve the proceeding through arbitration or negotiation must be by consent of the contracting parties. The Motion was denied because the contracting parties did not consent to the IECG's proposed alternatives.

On June 21, 2000, the IECG filed a request for the Commission to review and reconsider the Hearing Examiner's June 2nd Order denying the IECG's Motion.

IV. DECISION

We deny the IECG's request for a review and reconsideration of the Hearing Examiner's June 2nd Order. During the last legislative session, the Legislature, after extensive debate, enacted a revised unallocated section 6. This legislation requires the Commission to establish the S.D. Warren and UAH PPA rates based on the annual change in the average cost of electricity of a specified class of CMP customers. The requirements of the law are clear. It requires the Commission, not arbitrators, to set the rates, and the rates must be set by reference to the total cost of electricity of certain classes of CMP customers. Accordingly, we are required by law to obtain competitive supply costs and calculate the PPA rates as specified by the Legislature. We have no authority to take any other action with regard to establishing the PPA rates.³ The IECG's concern, therefore, is with the requirements of the legislation, and the time to have raised those concerns was during the legislative session.

We are, however, sympathetic to the IECG's concern. We realize that energy supply costs represent sensitive, confidential business information. However, as explained above, the Staff and the parties to the S.D. Warren proceeding have agreed on unprecedented measures to maintain the confidentiality of customer supply costs. Under these unique and limited circumstances, our view is that the need to obtain these data will not act to chill Maine retail electricity market, as suggested by the IECG.

Because we have no legal authority to act to set the PPA rates other than as specified in unallocated section 6, we deny the IECG's request that we mandate arbitration or negotiation.

³ Although we could suspend the proceedings to allow time for negotiations, both parties to the PPA have indicated that further negotiations would likely not be successful. We also note that the IECG's motion was filed on May 24; we issue this Order on August 1, more than two months later. As a practical matter, the IECG has the benefit of even more time than it requested.

Dated at Augusta, Maine, this 1st day of August, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.